

# Order

Entered: March 25, 2003

Michigan Supreme Court  
Lansing, Michigan

Maura D. Corrigan,  
Chief Justice

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Clifford W. Taylor  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

2003-12

## Proposed New Rule 3.221 of the Michigan Court Rules

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On order of the Court, this is to advise that the Court is considering proposed new Rule 3.221 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal, or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing by the Court before a final decision is made. The schedule and agendas for public hearings are posted on the Court's website, [www.courts.mi.gov/supremecourt](http://www.courts.mi.gov/supremecourt).

Publication of these proposals does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposals in their present form.

[The new rule would read as follows:]

Rule 3.221 Hearings on Support and Parenting Time Enforcement Act Bench Warrants.

(A) Definitions.

- (1) Unless the context indicates otherwise, the term “bond” means the performance bond required by MCL 552.631.
- (2) The term “cash” means money or the equivalent of money, such as a money order, cashier's check, or negotiable check or a payment by debit or credit card, which equivalent is accepted as cash by the agency accepting the payment.

- (3) Unless the context indicates otherwise, the term “person” when used in this rule, means a party who has been arrested on a bench warrant issued pursuant to MCL 552.631.
- (B) **Hearing on the Merits.** The court shall hold a hearing in connection with the matter in which the warrant was issued within 21 days of the date of arrest. Except as provided in this rule, a person who does not post a bond, within 48 hours of arrest excluding weekends and holidays, shall be brought before the court that issued the warrant for further proceedings on the matter in which the warrant was issued. The hearing may be adjourned when necessary to give notice of the proceedings to another party or to receive additional evidence. In the event the hearing is adjourned, the court shall set terms of release under subrule (F). Failure to hold a hearing within 21 days will not deprive the court of jurisdiction to proceed.
- (C) **Bond Review Hearing.** A person who has not posted a bond, and whose case cannot be heard as provided in subrule (B), must without unnecessary delay be brought before a judge, magistrate, or referee for a review of the bond.
- (D) **Place of Bond Review Hearing.** Except as otherwise provided in this subrule, a bond review hearing under subrule (E) must be held in the circuit court specified in the warrant. If a person is arrested in a circuit other than the one specified in the warrant, the arresting agency must make arrangements to assure that the person is promptly transported to the court specified in the warrant for a hearing in accordance with the provisions of this rule. If prompt transportation cannot be arranged, the bond review hearing must be held in the jurisdiction in which the individual is being held.
- (E) **Conduct of Bond Review Hearing.** At the bond review hearing, the person must be advised of the amounts due under the child support order as specified in the warrant and a determination must be made of what form of prehearing release is appropriate. A verbatim record must be made of the bond review hearing. Pending the hearing required under subrule (B), the person must be released on conditions under subrule (F).
- (F) **Conditional Release.** The person must be released on condition that the person will appear for a hearing under subrule (B) and any other conditions that are appropriate to ensure that the person will appear as required for a hearing under subrule (B), including requiring the person to:

- (1) make reports to a court agency as required by the court or the agency;
- (2) comply with restrictions on personal associations, place of residence, place of employment, or travel;
- (3) surrender driver's license or passport;
- (4) comply with a specified curfew;
- (5) continue or seek employment or participate in a work program;
- (6) continue or begin an educational program;
- (7) remain in the custody of a responsible member of the community who agrees to monitor the person and report any violation of any release condition to the court;
- (8) post a bond as described in subrule (G).

In the event the person cannot satisfy a condition of release, the arresting agency must make arrangements with the authorities in the county of the court specified in the warrant to have the person promptly transported to that county for a hearing in accordance with the provisions of this rule.

- (G) **Performance Bond Modification.** If it is determined for reasons stated on the record that the person's appearance cannot otherwise be assured, the person, in addition to any conditions described in subrule (F), may be required to post a bond executed:
- (1) by the person, or by another who is not a licensed surety, and secured by a cash deposit for the full bond amount, or
  - (2) by a surety approved by the court.
- (H) **Decision; Statement of Reasons.**
- (1) In deciding what terms and conditions to impose under subrule (F), relevant information, including the following shall be considered:

- (a) the person's record for reporting information to the friend of the court and complying with court orders;
  - (b) the person's record of appearance or nonappearance at court proceedings;
  - (c) the person's history of substance abuse or addiction;
  - (d) the amount of support owed;
  - (e) the person's employment status and history and financial history insofar as these factors relate to the ability to post bond;
  - (f) the availability of responsible members of the community who would vouch for or monitor the person;
  - (g) facts indicating the person's ties to the community, including family ties and relationships, and length of residence; and
  - (h) any other facts bearing on the risk of nonappearance.
- (2) The reasons for requiring a bond under subrule (F), must be stated on the record. A finding on each of the enumerated factors is not necessary.
  - (3) Nothing in this rule may be construed to sanction the determination of prehearing release on the basis of race, religion, gender, economic status, or other impermissible criteria.
- (I) Review; Modification of Release Decision.
- (1) Review. A party seeking review of a release decision may file a motion in the court having appellate jurisdiction over the decision maker. If the decision was made by a magistrate or referee, a party is entitled to a new hearing. Otherwise, the reviewing court may not stay, vacate, modify, or reverse the release decision except on finding an abuse of discretion.
  - (2) Emergency Release. If a person is ordered released from custody as a result of a court order or law requiring the release of prisoners to relieve jail conditions, the court ordering the release shall impose conditions of release in accordance with this rule to ensure the appearance of the

individual as required. If such conditions of release are imposed, the court must inform the person of the conditions on the record or by furnishing to the person or the person's lawyer a copy of the release order setting forth the conditions.

(J) Termination of Release Order.

- (1) After a bond is set pursuant to subrule (G), if the person appears for the hearing in subrule (B) the court must vacate the release order, discharge a third party who has posted the bond, and return the cash posted in the full amount of the bond. At the court's discretion, an arrested person who has deposited money with the court may be required to forfeit all or a portion of the amount to pay support, fines, fees, costs, and sanctions.
- (2) If the person fails to comply with any conditions of release, the court that issued the original bench warrant may issue a new bench warrant for the person's arrest and enter an order revoking the release order and declaring the bond, if any, forfeited.
  - (a) The court must mail notice of any revocation order immediately to the person at the person's last known address and, if forfeiture of bond has been ordered, to anyone who posted bond.
  - (b) If the person does not appear and surrender to the court within 28 days after the revocation date or does not within the period satisfy the court that there was compliance with the conditions of release or that compliance was impossible through no fault of the person, the court may continue the revocation order and enter judgment forfeiting the bond against the individual and anyone who posted bond for the entire amount of the bond and costs of the court proceedings and costs associated with the arrest.

(K) Plan for Remote Bond Review Hearings. In each county, the court with trial jurisdiction over friend of the court cases must adopt and file with the State Court Administrator a plan for conducting bond review hearings on bench warrants issued as a result of a show cause hearing when the person is arrested in another county and cannot be transported immediately. The plan shall provide for the use of available technology for a person's appearance and the transmission and presentation of evidence in hearings under this rule.

Staff Comment: The proposed rule implements 2002 PA 567, which will amend MCL 552.602, 552.631, and 552.632, effective June 1, 2003, to require bench warrants to be processed pursuant to rules established by the Supreme Court. The proposed rule determines the procedure to be used when a person is arrested pursuant to a bench warrant issued for a child support payer's failure to appear at a show cause proceeding for nonpayment of support.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on this proposal may be sent to the Supreme Court Clerk in writing or electronically by June 1, 2003, P.O. Box 30052, Lansing, MI 48909, or MSC\_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2003-12. Your comments and the comments of others will be posted at [www.courts.michigan.gov/supremecourt](http://www.courts.michigan.gov/supremecourt).



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 25, 2003

Corbin R. Davis